

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

RICHARD MICHAEL CUSTER,

Plaintiff,

v.

Civil Action No. 2:08cv54

**W.V. NORTHERN REGIONAL JAIL,
JAMES SPENCER, SHAR MURRIN MASON,
LT. MIDCAP, and CORPORAL STOCKGLASS,**

Defendants.

ORDER

It will be recalled that on April 24, 2008, Magistrate Judge John S. Kaull filed his Report and Recommendation, wherein the Plaintiff was directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections to the Magistrate Judge's Report and Recommendation have been filed. Accordingly, the Court will proceed with consideration of the Report and Recommendation reviewing for clear error.¹

Upon examination of the report from the Magistrate Judge, it appears to the Court that the issues raised by the Plaintiff in his Complaint, filed pursuant to 42 U.S.C. §1983, wherein Plaintiff alleges that Defendants harassed and tortured him, were properly considered by Magistrate Judge Kaull in his Report and Recommendation. Moreover, the Court, upon a review for clear error of all matters now before it, is of the

¹The failure of a party to object to a Report and Recommendation waives the party's right to appeal from a judgment of this Court based thereon and, additionally, relieves the Court of any obligation to conduct a *de novo* review of the issues presented. See Wells v. Shriners Hospital, 109 F.3d 198, 199-200 (4th Cir. 1997); Thomas v. Arn, 474 U.S. 140, 148-153 (1985).

opinion that the Report and Recommendation accurately reflects the law applicable to the facts and circumstances before the Court in this action. Therefore, it is

ORDERED that Magistrate Judge Kaull's Report and Recommendation be, and the same hereby is, accepted in whole and that this civil action proceed in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Plaintiff's claims against the Northern Regional Jail shall be, and the same hereby are, **DISMISSED** with prejudice for failure to state a claim and that said Defendant be **STRICKEN** from the docket. It is further

ORDERED that the Clerk shall enter judgment for Northern Regional Jail. It is further

ORDERED that the Plaintiff's complaint against the remaining defendants, namely Defendants Spencer, Mason, Midcap and Stockglass, shall be served on said Defendants. In that regard, the United States Marshal Service is hereby directed to serve a copy of the complaint, a completed 20-day summons, and a completed Marshal 285 Form on Defendants Spencer, Mason, Midcap and Stockglass. It is further

ORDERED that, pursuant to Rule 4(i) of the Federal Rules of Civil Procedure, a copy of the complaint and a completed summons shall be sent to the United States Attorney for the Northern District of West Virginia, and the Attorney General of the United States in Washington, D.C., via certified mail, return receipt requested.

The Clerk of the Court is directed to transmit a copy of this Order to all parties appearing herein and to the United States Marshal Service.

ENTER: January 14th, 2009

/s/ Robert E. Maxwell
United States District Judge